

REMARKS/ARGUMENTS

Claims 1-5, 8, 12-23, 25-28, and 31-42, and 44-46 are pending in the present application, of which claims 1, 12, and 25 are independent. Claims 7, 30, and 43 are hereby canceled without prejudice to or disclaimer of their subject matter. Claims 1, 2, 4, 12, 13, 25, and 27 are hereby amended. No new matter has been added.

The courtesies extended to Applicant's representative by Examiner Jakovac during the interview held on July 6, 2009, are appreciated. The reasons presented at the interview as warranting favorable action are incorporated into the remarks below and constitute Applicant's record of the interview.

REJECTIONS UNDER 35 U.S.C. § 101

On page 2, the Office Action rejects claims 1 and 25 under 35 U.S.C. § 101 for allegedly failing to positively recite the statutory class or transforming underlying subject matter. Applicant respectfully traverses these rejections.

As agreed during the interview held on July 6, 2009, independent claims 1 and 25 now recite a network management system (NMS) as a "particular machine," to satisfy the test for patent eligibility set forth by *In re Bilski*. Accordingly, Applicant respectfully requests withdrawal of the rejections of claims 1 and 25 under 35 U.S.C. § 101.

REJECTIONS UNDER 35 U.S.C. § 103(A)

On pages 3-12, the Office Action rejects claims 1-5, 7, 8, 12-22, 25-28, and 30-41, and 43-46 under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent Application No. 2004/0255151 to Mei et al. (hereinafter “Mei”) in view of “Real-Time SLA Monitoring Tools” to Warter (hereinafter “Warter”), and further in view of U.S. Patent Application No. 2004/0153563 to Shay et al. (hereinafter “Shay”). On page 12, the Office Action rejects claims 23 and 42 under 35 U.S.C. § 103(a) as allegedly unpatentable over Mei in view of Warter, further in view of Shay, and still further in view of U.S. Patent Application No. 2002/0049841 to Johnson et al. (hereinafter “Johnson”). Applicant respectfully traverses these rejections.

Independent claims 1, 12, and 25, as amended, now recite the following subject matter: “b, a degree of burst transmission, r, a sustainable content conveyance rate, M, a maximum packet size, and p, a peak content conveyance rate” (emphasis added). This subject matter finds support, for example, in paragraph [0043] of the specification, which describes an arrival curve defined by four parameters as depicted in Figure 4. Applicant respectfully submits that the references of record do not disclose, teach, or suggest this subject matter.

On page 3, the Office Action correctly concedes that Mei does not expressly disclose the adjustment of arrival curve parameters. The Office Action then attempts to remedy Mei’s admitted deficiency by alleging that Warter’s “verifiers”

perform this function. However, Applicant respectfully submits that Warter is silent regarding arrival curve parameters that comprise "at least a slope and an ordinate intercept."

On page 5, the Office Action alleges that Mei provides a "two parameter arrival curve." As discussed during the interview on July 6, 2009, all independent claims now recite a four parameter arrival curve. Applicant respectfully submits that Mei clearly fails to define the four parameters (b, r, M, p) that are now recited by independent claims 1, 12, and 25.

Warter, Shay, and Johnson fail to remedy the deficiencies of Mei because they also lack the recited four parameter arrival curve. Accordingly, Applicant respectfully submits that, independent claims 1, 12, and 25 are allowable over the references of record.

Claims 2-5, 8, and 44 depend from claim 1. Claims 13-23 and 45 depend from claim 12. Claims 26-28, 31-42, and 46 depend from claim 25. Thus, Applicant respectfully submits that claims 2-5, 8, 13-23, 26-28, 31-42, and 44-46 are allowable at least on the basis of their respective dependencies from allowable independent claims. Claims 7, 30, and 43 are hereby canceled without prejudice to or disclaimer of their subject matter.

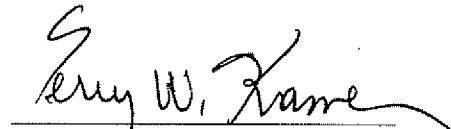
Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 1-5, 7, 8, 12-23, 25-28, and 30-46 under 35 U.S.C. § 103(a).

CONCLUSION

While we believe that the instant amendment places the application in condition for allowance, should the Examiner have any further comments or suggestions, it is respectfully requested that the Examiner telephone the undersigned attorney in order to expeditiously resolve any outstanding issues.

In the event that the fees submitted prove to be insufficient in connection with the filing of this paper, please charge our Deposit Account Number 50-0578 and please credit any excess fees to such Deposit Account.

Respectfully submitted,
KRAMER & AMADO, P.C.



Terry W. Kramer
Registration No.: 41,541

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KRAMER & AMADO, P.C.
1725 Duke Street, Suite 240
Alexandria, VA 22314
Phone: 703-519-9801
Fax: 703-519-9802